

IN THE MATTER OF	:	BEFORE THE
WILLIAM F. SCHWARTZ	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-017V

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DECISION AND ORDER

On May 30, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of William F. Schwartz, Petitioner, for a variance to reduce the 30-foot rear setback to 22.5 feet for the construction of an addition in an R-SC (Residential – Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. William F. Schwartz testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owner of the subject property, known as 8732 Clemente Court, which is located in the 6th Election District on the southeast side of the terminus of Clemente Court in Jessup (the "Property"). The Property is referenced on Tax Map 42, Block 186 as Parcel 63, Lot 26.

2. The Property is pentagonal in shape and consists of about 9,880 square feet, or .227 acres. The lot has about 40 feet of frontage on the cul-de-sac of Clemente Court. The north side lot line is about 130 feet long and the northeast side lot line is 36 feet long. The south side lot line is about 83 feet long while the southeast rear lot line is about 125 feet long. The central portion of the Property is about 100 feet wide.

The Property is improved with a 1½-story, split-level, single-family detached dwelling that is about 40 feet wide and 24 feet deep. A deck is attached to the south end of the rear of the home. The house is located about 35 feet from the front lot line, 18 feet from the south side lot line, 9.3 feet from the north side lot line, and 35 feet from the rear lot line. Access to the Property is gained via a paved driveway that runs from Clemente Court to the southwest side of the house. The topography of the Property is generally flat in the front and the area of the home, then slopes down in the northeast portion of the lot. Mature and young trees line the rear lot line.

3. The Petitioner proposes to construct an addition onto the south side of the rear of the house that will be 20 feet wide and 15 feet deep. The purpose of the addition is to create a family room off of the dining room which is situated on the south side of the house. The addition will be constructed of materials that will match the existing home. When constructed, the addition be situated about 22.5 feet from the rear lot line, resulting in an

encroachment of about 7.5 feet into the 30-foot rear setback required by Section 110.D.4.d(1)(c)(i).

4. Vicinal properties are also zoned R-SC and are residential lots improved with single-family homes in the Mission Heights subdivision. According to the aerial photograph of the vicinity attached to the Department of Planning and Zoning memorandum dated May 26, 2006, the Property is about the same size and shape as three other lots on the Clemente Court cul-de-sac, and appears to be larger than most other lots in the subdivision, which are uniformly rectangular. In addition, many nearby properties have smaller rear yards than the Property. From the aerial photograph and my observation of the neighborhood, the Petitioner's home appears to be presently about the same size as other homes in the area.

The property immediately adjacent to the rear lot line of the Property where the addition is proposed is improved with a single family home fronting on Mission Road.

6. The Petitioner testified that his house is only 1,200 square feet and is the smallest house in the neighborhood, which range from 1,800 to 2,200 square feet.¹ The home has no basement or garage. He stated that the master bedroom is on the left (north) side of the house, which is why he decided to build the addition on the south side. He decided to make the addition 20 feet wide because that is the width of the dining room. He stated that the topography of the lot does not pose a difficulty – the addition could be built on the north side of the rear of the house but for the location of the master bedroom.

¹ The Petitioner submitted a SDAT property report indicating that the enclosed area of the structure is 1,568 square feet. He did not submit any similar information concerning the size of other homes in the neighborhood. Therefore, I cannot credit his testimony on this issue.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

1. The standards for variances are contained in Section 130.B.2.a of the Regulations.

That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

For the reasons stated below, I find that the requested variance does not comply with Section 130.B.2.a(1), and therefore must be denied.

2. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v.*

Ward, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thusly:

“In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic *not shared by other properties in the area*, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.”

North v. St. Mary’s County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Petitioner has not shown that the Property is in any way unique such that the rear setback of Section 110.D.4.d(1)(c)(i) will disproportionately impact it. The evidence presented indicates that the Property is equal or larger in size than many other properties in the neighborhood. What’s more, many other properties in the area have smaller rear yards than the Property. While the shape of the Property is the characteristic that poses a problem in meeting the Petitioner’s desire to expand to the south end of the rear of his home, it is by no means unique.

In addition, by the Petitioner’s own admission, there appears to be ample room to the north end of the rear of the Petitioner’s home on which an addition could be built within the Property’s building envelope. The Petitioner argues that this is not practical because the

master bedroom is on the north side of the house.² As stated above, however, I may not consider the location of the improvements on the Property or their internal layout as a unique physical condition of the land for the purposes of the variance requirements. Any practical difficulty must relate to the uniqueness of the land itself, and not to the improvements upon it, including the orientation or layout of the home. I must therefore view the Property as if the house had not been built. The reason for this rule is to prevent a property owner (or his predecessor) from creating a need for a variance.

Consequently, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, he has not shown that the Property itself has any unusual or unique characteristic that necessitates the variance requested. For this reason, the variance request fails to comply with Section 130.B.2.a(1).

Moreover, the Petitioner has not shown that he will experience a “practical difficulty” if the variance is not granted. The Petitioner’s home appears to be the same size as most in the vicinity. When the addition is completed, the home will be one of the larger in the area. The grant of the variance would therefore enable him to build an even larger home and gain a benefit not possessed by other homeowners. Consequently, the effect of the rear setback cannot be considered unnecessarily burdensome for the purposes of Section 131.B.2.a(1).

Conclusion

It is well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell*, id.

² Because the north side of the house is two levels, an addition to that side could be built from the lower level.

While it may be desirable for the Petitioner to be able to construct an addition on his Property, it must be accomplished within the restrictions of the Zoning Regulations.

It is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the orderly development of land through the imposition of uniform regulations and standards. Variances to these standards are therefore to be sparingly granted, and only under exceptional circumstances. *Cromwell*, 651 A.2d at 430.

Simply put, if I were to grant a variance to this Petitioner to accommodate his personal desires and circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

The Petitioner in this case has not presented sufficient evidence to show that exceptional circumstances exist to warrant the grant of a variance to the setback requirements. Consequently, I am compelled to deny the request.

ORDER

Based upon the foregoing, it is this **23rd day of June 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of William F. Schwartz for a variance to reduce the 30-foot rear setback to 22.5 feet for the construction of an addition in an R-SC (Residential – Single Cluster) Zoning District is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.